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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/025,896	02/18/1998	BILLIE JEAN LONGSTRETH		1132

7590

06/06/2003

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EXAMINER

GOODMAN, CHARLES

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 06/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n N .

09/025,896

Applicant(s)

LONGSTRETH, BILLIE JEAN

Examiner

Charles Goodman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *Copy of MPEP 1200*.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 2, 2003 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Seib et al.

Seib et al discloses a stoma flange cutter comprising all the elements claimed including, inter alia, a circular top (e.g. 38, 40); a circular bottom (e.g. at 42); a cylindrical body wall (36); a permanently affixed cap (18); cutting edge (42); and a removable protective cover (20).

Regarding the work being “cabbage”, this has not been given significant patentable weight, since it has been held that a recitation with respect to the manner in

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which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding the manner in which the cutting and chopping means is formed, this has not been given significant patentable weight, since in an apparatus invention, how a structure is formed is not germane to the structure itself.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothje in view of Snyder.

Rothje discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 6); an open bottom (at 2 in the Figures); and a cutting edge (2). See whole patent. However, Rothje lacks a cover for the cutting edge. In that regard, Snyder teaches a cylindrical shaped cutter having a protective cover (40) for the inherent purpose of protecting the user from potential harm via the cutting edge (30). Figs. 1-8, c. 2, ll. 35-38. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device

of Rothje with the cover as taught by Snyder in order to prevent potential harm to the user from the cutting edge.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rothje in view of Seib et al.

Rothje discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 6); an open bottom (at 2 in the Figures); and a cutting edge (2). See whole patent. However, Rothje lacks a cover for the cutting edge. In that regard, Seib et al teaches a cutter having a protective cover (20) for the inherent purpose of protecting the user from potential harm via the cutting edge (42) as well as for storage purposes. See c. 3, ll. 4-18. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Rothje with the cover as taught by Seib et al in order to prevent potential harm to the user from the cutting edge and to facilitate storage of the device.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bell in view of Collins and Snyder.

Bell discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 4); and an open bottom (below 5 in Fig. 3). See whole patent. However, it appears that Bell lacks (A) a sharpened cutting edge and (B) a cover.

Regarding (A), although it appears that Bell lacks a sharpened edge, Collins teaches a kitchen utensil having a cylindrical body (10) and a sharpened cutting edge (14) which allows for an easier operation of cutting slicing, chopping, mixing and blending of foods. Figs. 1-3, c. 1, ll. 7-15 and c. 2, ll. 38-41. Thus, it would have been

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obvious to the ordinary artisan at the time of the instant invention to provide the device of Bell with the sharpened cutting edge as taught by Collins in order to facilitate easier chopping of material.

Regarding (B), the modified device of Bell lacks a cover for the cutting edge. However, Snyder teaches a cylindrical shaped cutter having a protective cover (40) for the inherent purpose of protecting the user from potential via the cutting edge (30). Figs. 1-8, c. 2, ll. 35-38. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified device of Bell with the cover as taught by Snyder in order to prevent potential harm to the user from the cutting edge.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bell in view of Collins and Seib et al.

Bell discloses the invention substantially as claimed including, *inter alia*, a cylindrical body (1); a closed top and handgrip (e.g. at 4); and an open bottom (below 5 in Fig. 3). See whole patent. However, it appears that Bell lacks (A) a sharpened cutting edge and (B) a cover.

Regarding (A), although it appears that Bell lacks a sharpened edge, Collins teaches a kitchen utensil having a cylindrical body (10) and a sharpened cutting edge (14) which allows for an easier operation of cutting slicing, chopping, mixing and blending of foods. Figs. 1-3, c. 1, ll. 7-15 and c. 2, ll. 38-41. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Bell with the sharpened cutting edge as taught by Collins in order to facilitate easier chopping of material.

Regarding (B), the modified device of Bell lacks a cover for the cutting edge. However, Seib et al teaches a cutter having a protective cover (20) for the inherent purpose of protecting the user from potential harm via the cutting edge (42) as well as for storage purposes. See c. 3, ll. 4-18. Thus, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified device of Bell with the cover as taught by Seib et al in order to prevent potential harm to the user from the cutting edge and to facilitate storage of the device.

### ***Response to Arguments***

9. Applicant's arguments filed April 2, 2003 have been fully considered but they are not persuasive.

In response to Applicant's basic argument that Seib et al does not anticipate the claimed invention because of the differences between how Seib et al's device is configured and used versus that of Applicant's invention,<sup>1</sup> this argument is respectfully traversed. Whether or not Seib et al has a different set up or intended use has no patentable weight in terms of the claimed structure. It is understood that there are differences between the invention and the cutter of Seib et al. However, it does not detract from the fact that Seib et al includes all the structural limitations as noted in the rejection above. Moreover, the cover in Seib et al is, in terms of the scope of the claim language, contiguous with the cutting edge in Seib et al, since the claim does not set forth any specific shape, size, material, etc. nor does the claim require that the cover be directly over the edge. Thus, the claimed cover is reasonably and broadly interpreted as

any structure covers the cutting edge, and inherently, if a cover covers the cutting edge, then it is contiguous thereto.

In response to Applicant's arguments that Rothje, Collins, Bell, and Snyder do not anticipate the claim,<sup>2</sup> this argument is respectfully traversed. These references were *not* used to reject the claim under 35 USC § 102, i.e. anticipation. Thus, Applicant's arguments that these references do not anticipate the claim is off the mark. They were used under 35 USC § 103 either as a starting reference or a teaching reference for whatever features the starting reference may lack. In laymen's terms, even if the starting or primary reference may lack some feature called for in the claim, would this lacking feature be *obvious* to modify or include into the primary reference to one of ordinary skill in the art based upon the knowledge and skill of the ordinary artisan and/or the teachings of the secondary references. The key word here is "obvious." In that regard, the obviousness rejections above set forth whatever the primary reference includes and lacks; whatever the secondary references teach as being an obvious modification; and the reason(s) for such a modification. Since Applicant's arguments do not set forth the reasons why it would not be obvious to one of ordinary skill in the art to make the modifications proposed by the Examiner, Applicant's arguments to the contrary fails to persuade.

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<sup>1</sup> Submission, Arguments, p. 1, l. 12 - p. 2, l. 7.

<sup>2</sup> *Id.*, p. 2, l. 8 - p. 3, l. 4.



Regarding Applicant's arguments with respect to Ancona et al, Harris, Kitchen Classics, etc.,<sup>3</sup> they have not been considered since these references have not been used to reject the claim.

Since it appears that the parties disagree on the patentability of the claimed invention, the Examiner respectfully advises that the Applicant pursue an appeals process. This entails that Applicant submit a Notice of Appeal and within two months (extendable up to five additional months with the required fees under 37 CFR 1.136), file an Appeal Brief. There are rules and formalities involved in submitting an Appeal Brief, and the Examiner has attached some of those guidelines in this Office Action. In the Appeal Brief, the Applicant must submit arguments traversing the Examiner's position. The Examiner then responds with an Examiner's Answer. Then Applicant has another chance to respond via a Reply Brief. Note the attached for the conditions relating to submitting a Reply Brief. When all this is completed, the application will be decided by a panel of three Administrative Judges on the Board of Patent Appeals and Interferences. The Examiner is suggesting this route because the Examiner does not wish the Applicant to expend additional time, effort, and funds on additional continuations. With an appeals process, the patentability of Applicant's invention can be decided by a third party.

The basic fee requirements for the appeals process is listed below.

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<sup>3</sup> *Id.*, p. 3, l. 5 - p. 5, l. 17.

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Description	Fees (for small entity)
Notice of appeal	\$ 160
Filing a brief in support of an appeal	\$ 160
Request for oral hearing	\$ 140
Extension for response within first month	\$ 55
Extension for response within second month	\$ 205
Extension for response within third month	\$ 465
Extension for response within fourth month	\$ 725
Extension for response within fifth month	\$ 985

### ***Conclusion***

10. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (703) 308-0501. The examiner can normally be reached on Monday-Thursday between 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached on (703) 308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

cg

June 5, 2003



**Charles Goodman**  
**Primary Examiner**  
**AU 3724**

**CHARLES GOODMAN**  
**PRIMARY EXAMINER**